Software Rights Archive, LLC v. Google Inc. et al Doc. 143

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Attorneys for Defendant
APPLE INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

THE APPLE iPOD iTUNES ANTI-TRUST LITIGATION	**Case No. C 05 00037 JW** **DECLARATION OF TRACY M. STRONG IN SUPPORT OF APPLE'S OPPOSITION TO MOTION TO COMPEL PRODUCTION OF DOCUMENTS "RELATING TO CLASS CERTIFICATION"** Date: January 16, 2008 Time: 9:30 a.m. Courtroom: 4, 5th Floor Judge: Magistrate Judge Richard Seeborg

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I, Tracy M. Strong, hereby declare as follows:

1. I am an associate in the law firm of Jones Day, located at 555 California Street, 26th Floor, San Francisco, CA 94104. I am a member in good standing of the State Bar of California, and one of the attorneys of record in this case for defendant. I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently thereto. I make this declaration in support of defendant's opposition to plaintiffs' motion to compel production of documents.

2. Attached hereto as Exhibit A is a true and correct copy of Plaintiffs' First Set of Requests for the Production of Documents and Things Directed At Defendant Apple Computer, Inc., from *Slattery v. Apple Computer, Inc.*, C 05-00037 JW, dated January 30, 2006. After plaintiff Slattery withdrew from the case and was replaced by plaintiffs Charoensak and Rosen, these discovery requests were deemed to have been propounded by the *Charoensak* plaintiffs.

3. In response to the *Charoensak* plaintiffs' document requests, Apple produced redacted "iTunes Music Store Business P&L" statements through the fourth quarter of fiscal year 2006 showing unit sales numbers for iTunes Store songs. Apple also produced a document showing the quarterly unit sales numbers for iPods sold directly by Apple in the United States through the fourth quarter of fiscal year 2006. The *Charoensak* plaintiffs did not object to the redactions, nor did they seek any further financial information.

4. On July 16, 2007, Apple produced in response to document request nos. 10 and 19 propounded by plaintiff Tucker updated unit sales information beyond what it had previously produced in *Charoensak*, including unit sales numbers for iTS music and video files and monthly iPod unit sales broken down by type of iPod through period six of fiscal year 2007.

5. On September 26, 2007, Apple produced to plaintiffs documents it had previously produced as a third-party in the *Napster* litigation. These documents included non-redacted iTunes Music Store Results and "Business P&L" statements through the fourth quarter of fiscal year 2004, showing revenue, cost and margin numbers for iTS.

6. On December 19, 2007, I called Greg Weston, counsel for plaintiffs, and offered to produce unredacted versions of the previously produced iTunes Business P&L statements as a compromise to avoid burdening the Court with this motion, but plaintiffs' counsel did not accept.

I declare under penalty of perjury under the laws of the United States and California that the foregoing is true and correct. Executed this 20th day of December, 2007.

By: ______________________
Tracy M. Strong

SFI-576137v1

Exhibit A

1/30/06 SV
Dkt 50

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Counsel for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THOMAS WILLIAM SLATTERY, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

v.

APPLE COMPUTER, INC..

Defendants.

No. C-05-00037 JW

PLAINTIFF'S FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS DIRECTED AT DEFENDANT APPLE COMPUTER, INC,

Propounding Party: Plaintiff Thomas William Slattery

Responding Party: Defendant Apple Computer, Inc.

Set: One

Pursuant to Federal Rule of Civil Procedure 33 and this Court's Case Management Order, Plaintiff Thomas William Slattery, by and through his undersigned counsel, hereby propounds this First Set of Interrogatories on Defendant Apple Computer, Inc. Defendant Apple Computer Corporation is directed to serve its responses to these interrogatories within 30 days after service.

DEFINITIONS

1. "YOU," "YOUR," "YOURSELF" OR "DEFENDANT" means Apple Computer, Inc., and all persons acting or purporting to act on its behalf, including attorneys.

2. "iTMS" means the iTunes ONLINE MUSIC STORE.

3. "ONLINE MUSIC STORE" means any place on the Internet from which DIGITAL MUSIC FILES may be purchased or acquired.

4. "iPod" refers to the PORTABLE HARD DRIVE DIGITAL MUSIC PLAYER manufactured by Apple and all versions of that product.

5. "PORTABLE HARD DRIVE DIGITAL MUSIC PLAYER" means any device that can be easily transported, is capable of playing a DIGITAL MUSIC FILE, employs a hard drive within the device, but does not employ external media such as compact discs, cartridges, cassettes, etc.

6. "DIGITAL MUSIC FILE" means a computer file regardless of format, including without limitation, AAC, MP3, Real Audio, WAV, WMA, and MIDI, that allows music to be played on a computer or other device that utilizes computer software (e.g., a PORTABLE DIGITAL MUSIC PLAYER).

7. The term "RIP" or "RIPPING" is used herein in the same manner as used in page 1 of Apple Computer, Inc.'s Reply In Support of Its motion to Dismiss Class Action Complaint filed in this action.

8. "APPLE" means Apple Computer, Inc., the defendant in this action.

DOCUMENT REQUESTS

1. Provide all versions of the iTMS Terms of Service Agreements that were in effect during any portion of the time period from April 28, 2003 to the present, as well as all versions of

any documents setting forth the policies, practices, licenses and/or agreements applicable to the use of the iTMS by consumers during the period April 28, 2003 to the present.

2. Documents sufficient to show the number of DIGITAL MUSIC FILES sold by iTMS during the period April 28, 2003 to the present.

3. For each different model of iPod sold by Apple, documents sufficient to show the number of iPod units sold directly by Apple during the period April 28, 2003 to the present.

4. Documents sufficient to show the number of iPod units that have received DIGITAL MUSIC FILE downloads purchased from iTMS during the period April 28, 2003 to the present.

Dated: January 30, 2006

Respectfully submitted:

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Washington, DC 20007
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Counsel for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THOMAS WILLIAM SLATTERY, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

v.

APPLE COMPUTER, INC..

Defendants.

No. C-05-00037 JW

PROOF OF SERVICE BY HAND DELIVERY

I, Roy A. Katriel, declare that I am a citizen of the United States of America, am over the age of eighteen years, and am not a party to the above-entitled action. My business address is The Katriel Law Firm, 1101 30th Street, NW Suite 500 in Washington, DC 20007. I further declare that on January 30, 2006, I delivered via hand delivery personal service the following documents:

PLAINTIFF'S FIRST SET OF INTERROGATORIES DIRECTED AT DEFENDANT APPLE COMPUTER, INC.

PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS DIRECTED AT DEFENDANT APPLE COMPUTER, INC.

on the following individuals:

Robert A. Mittelstaedt, Esq.
JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94104

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 30, 2006 in San Francisco, California.

Roy A. Katriel